

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
MARSHALL DIVISION**

BMC Software, Inc.,

Plaintiff,

-against-

ServiceNow, Inc.

Civil Action No. 2:14-cv-903

**JURY TRIAL DEMANDED**

Defendant.

**COMPLAINT FOR PATENT INFRINGEMENT**

BMC Software, Inc. (“BMC”), by and through its undersigned attorneys, based upon personal knowledge with respect to its own actions and on information and belief as to other matters, for its complaint avers as follows:

**THE PARTIES**

**A. BMC Software**

1. Plaintiff BMC is a leading provider of information technology (IT) management systems and serves thousands of customers around the globe, from small and mid-size businesses to the largest companies in the world. BMC is a corporation organized under the laws of Delaware with its headquarters at 2101 CityWest Boulevard, Houston, Texas 77042.

2. BMC was founded in Houston, Texas by Scott Boulette, John Moores, and Dan Cloer, whose last names were used to form the name BMC. BMC’s founders worked as software programmers for Shell Oil in Houston, Texas, and thereafter left together to start BMC.

Since BMC was founded in 1980, the company has grown to become one of the world's leading software providers.

3. Today, BMC has approximately 6,000 employees who support more than 20,000 customers across the globe.

4. BMC's IT management systems enable companies to easily manage, track, and service the ever-increasing number of network servers, computers, printers, software applications, and other computing resources needed across an enterprise, to ensure users are not disrupted in their business activities.

5. Helping build the IT management industry through the design and development of modern IT management systems was no small feat. BMC made enormous investments over many years in research and development, as well as significant acquisitions. From these investments, BMC invented or further developed the technologies needed to make a modern IT management system possible.

6. More specifically, BMC has invested approximately \$8 billion in research and development during the past 34 years to help build many of today's leading IT management solutions. The results of these efforts are highly valuable and patented innovations.

7. BMC's large investments in research and development have enabled the development of numerous technologies necessary for an enterprise to build and deploy both on-premise and cloud-based IT management systems. These fundamental IT management technologies include the basic processes of a modern IT management system, including:

(i) Incident Management and Problem Management: BMC engineers developed numerous software innovations, including visualization tools for rendering and displaying information about the health status of an enterprise, to enable IT personnel to restore normal

operation following a user-reported incident, quickly and efficiently (“*Incident Management Visualization*”). BMC engineers also invented graphical user interfaces (including novel color maps) that enable IT personnel to easily visualize the health, status, and relationships of IT components causing a problem, and their compliance with service level agreements (“*Problem Management GUIs*”). Appreciating the human limitations and challenges of identifying and correcting for the root cause of a fault and its impact across an enterprise, BMC engineers invented and developed complementary technologies that allow IT personnel to automatically determine the root cause of a failure and the computing resources impacted, and to distinguish between the two, so that corrective action can be taken immediately, greatly reducing network downtime and service disruptions (“*Root Cause Failure Determination*”).

(ii) Performance Analytics: Recognizing that a critical aspect of IT management is measuring system performance, including for systems unique to an individual enterprise customer, BMC invested in technologies that allow for performance analytics tools to be customized to meet the specific needs of an enterprise and for such tools to have intuitive, graphical dashboards that allow IT personnel to detect and address problems before they become manifest (“*Customizable Performance Analytics Tools*”).

(iii) Configuration Management: To simply and automatically track the configuration, provisioning, and status of the computing resources of an enterprise, BMC engineers invented and developed technologies fundamental to the modern architecture of a Configuration Management Database (“CMDB”). These foundational technologies include, for example, hierarchical CMDBs for modeling the computing resources of an enterprise using Configuration Items (CIs) (“*Hierarchical CMDBs*”) and a novel way of modeling the deployment of software assets to ensure compliance with applicable software licenses, thereby preventing the substantial

monetary penalties that could otherwise be imposed on an enterprise (“*Software License Compliance Modeling*”).

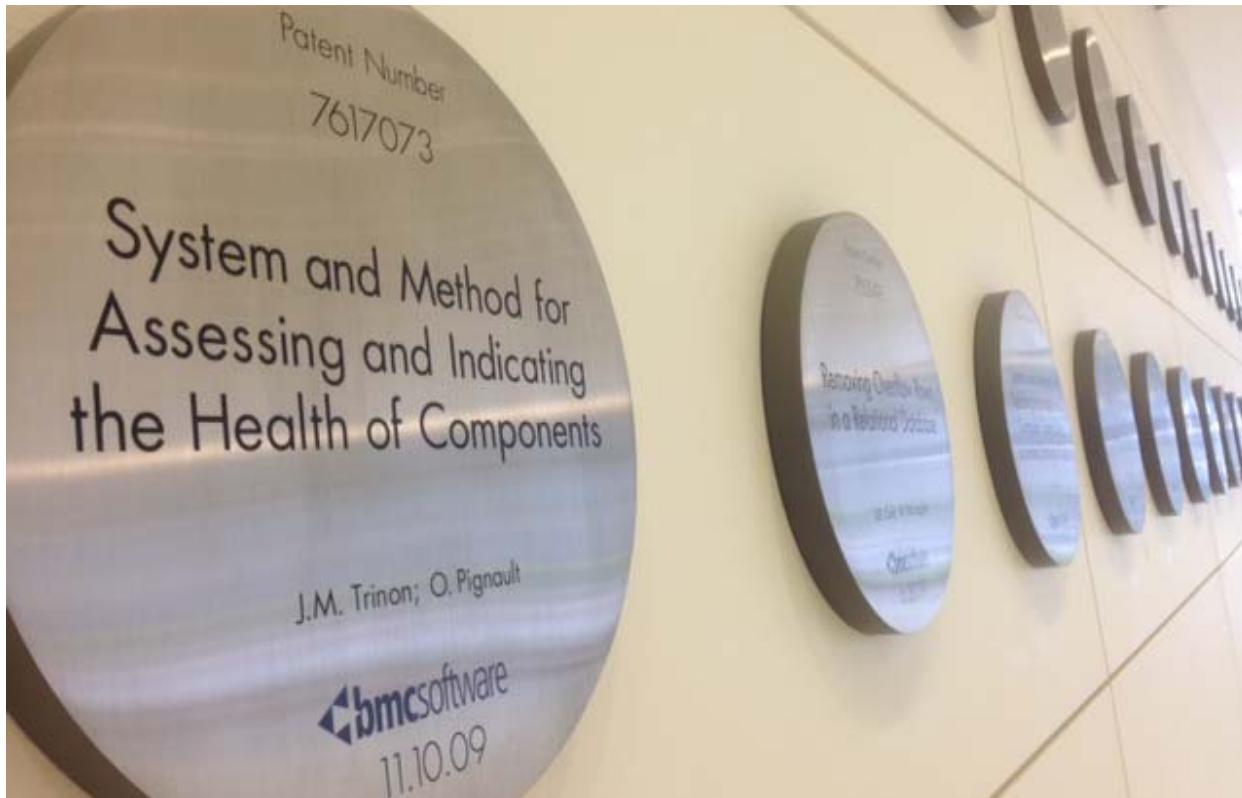
(iv) Discovery: In addition to their work in developing the modern CMDB architecture, BMC engineers also developed software tools and related technologies for automatically discovering the computing resources of an enterprise across its different offices and locations, including network servers, computers, printers, and software applications, how they are configured and provisioned, and what their status is (such Discovery tools are referred to in the industry as “*Discovery Probes*”).

(v) Orchestration: BMC engineers developed novel ways by which IT management tasks could be discovered, automated and customized, using scripts and plugins, and integrated with an IT management system (referred to in the industry as “*Orchestration*”).

(vi) Change and Release Management: BMC engineers developed visualization tools for managing and monitoring updates, releases, and other IT change functions associated with the computing resources of an enterprise (“*Change and Release Management Visualization*”). These visualization software tools minimize the risks of service disruptions in implementing changes to the IT components of an enterprise, and facilitate creating, assessing, approving, and implementing changes across an enterprise effectively. In addition, to manage heterogeneous network servers across an enterprise (i.e., servers that use different operating systems), BMC engineers invented and developed technologies that allow for many different network servers to be configured, provisioned, and updated automatically using a single platform and language, a “one-to-many” approach.

8. To encourage these and its many other innovations, BMC has an Inventor Recognition Program designed to recognize and reward employees for their inventions.

Inventing and patents are so central to the company's success that employees' inventive contributions are also recognized through the memorialization of their names and patents on BMC's Patent Wall, located at its Houston headquarters and in several other company offices around the world.



9. To ensure that companies do not free-ride on BMC's enormous investments in research and development, BMC relies on the protection of its intellectual property and the enforcement of its intellectual property rights, including the hundreds of patents awarded to BMC employees for their innovations.

10. BMC's ability to earn sufficient profits from demand for its innovations is harmed when others freely use these patented technologies and offer them at below market prices because such infringers do not need to recoup BMC's enormous R&D investments. If such infringement is permitted, BMC will be unable to continue to make the kinds of investments

needed to develop and grow the industry. And, ultimately, this will have an adverse impact on BMC's ability to continue to create thousands of jobs for the people of Texas and many others worldwide.

11. BMC's IT management innovations are the subject of more than 300 current and pending patents before the U.S. Patent and Trademark Office. From this portfolio, BMC has selected a diverse group of patents to assert in this action spanning the IT management solution areas described above to demonstrate the scope and strength of BMC's innovations and its patent portfolio, and to show ServiceNow's widespread infringement of BMC's intellectual property rights.

#### **B. ServiceNow**

12. Defendant ServiceNow, Inc. ("ServiceNow") is a corporation organized under the laws of the State of Delaware and registered to do business in the State of Texas, with a principal place of business at 3260 Jay Street, Santa Clara, California 95054.

13. ServiceNow maintains numerous offices around the world, and is doing business in the Eastern District of Texas, with an office at 7160 North Dallas Parkway, Suite 240, Plano, Texas 75024.

14. ServiceNow has not innovated like BMC, and has no patents of its own. Instead, ServiceNow's business is largely built upon its infringement of BMC's patented technologies.

15. During a May 2013 interview, ServiceNow's founder, Fred Luddy, explained his attitude towards the intellectual property rights of others and the "secret sauce" behind ServiceNow's business: "good artists copy and great artists steal, and I've been a thief all my life. I'm going to admit it right here, right on camera, live."<sup>1</sup>

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<sup>1</sup> ServiceNow Knowledge13, <https://www.youtube.com/watch?v=-MiRSG116pk>, [5:35-6:15].



**“Good artists copy and great artists steal, and I’ve been a thief all my life. I’m going to admit it right here, right on camera, live.”**

16. Luddy is absolutely correct: ServiceNow is unlawfully using many of BMC's patented technologies. Indeed, each significant aspect of ServiceNow's business is built around infringement of BMC's patents, and ServiceNow's website touts its offerings of IT management technologies that are the subject of numerous BMC patents, including (i) Incident Management, (ii) Problem Management, (iii) Performance Analytics, (iv) Configuration Management (including ServiceNow's Configuration Management Database (CMDB)), (v) Discovery, (vi) Orchestration, and (vii) Change and Release Management.<sup>2</sup>

17. As illustrated below from ServiceNow's website, each of these technologies, which ServiceNow offers, is critical to ServiceNow's ability to provide modern IT management solutions to customers:

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<sup>2</sup> E.g., <http://www.servicenow.com/products.html>; <http://www.servicenow.com/products/it-service-automation-applications.html>.

ServiceNow Product Offering	Importance to IT Management
 <b>Incident Management</b>	ServiceNow's IT management system relies on Incident Management "to restore normal service operation as quickly as possible following an incident, while minimizing impact to business operations and ensuring quality is maintained." <sup>3</sup>
 <b>Problem Management</b>	With Problem Management, ServiceNow "helps IT investigate the root cause of an incident," which can be used "to remove the causes of incidents permanently from the IT infrastructure." <sup>4</sup> In addition, its ServiceWatch product, for example, "provides visibility of the health of applications and business services" across an enterprise. <sup>5</sup>
 <b>Performance Analytics</b>	Performance Analytics are used in ServiceNow's IT management system to "provide powerful insight into how to improve performance in intuitive, graphical dashboards." <sup>6</sup> "IT performance reporting and analytics is a strategic gap that must be filled for IT to prove its value to the enterprise." <sup>7</sup>
 <b>Configuration Management</b>	Configuration Management "supports the processes that manage the ServiceNow Configuration Management Database (CMDB), which in turn enables most other ServiceNow applications that automate IT services." <sup>8</sup> ServiceNow's CMDB architecture supports the storage of Configuration Items (CIs) that implement

<sup>3</sup> [http://wiki.servicenow.com/index.php?title=Incident\\_Management](http://wiki.servicenow.com/index.php?title=Incident_Management); <http://www.servicenow.com/products/it-service-automation-applications/incident-management.html>.

<sup>4</sup> <http://www.servicenow.com/products/it-service-automation-applications/problem-management.html>; [http://wiki.servicenow.com/index.php?title=Problem\\_Management](http://wiki.servicenow.com/index.php?title=Problem_Management).

<sup>5</sup> <http://www.neebula.com/service-availability-management/service-monitoring-software/>.

<sup>6</sup> <http://www.servicenow.com/products/performance-analytics.html>; [http://wiki.servicenow.com/index.php?title=Performance\\_Analytics](http://wiki.servicenow.com/index.php?title=Performance_Analytics).

<sup>7</sup> [http://www.servicenow.com/products/performance-analytics.html/](http://www.servicenow.com/products/performance-analytics.html).

<sup>8</sup> <http://www.servicenow.com/products/it-service-automation-applications/configuration-management.html>; [http://wiki.servicenow.com/index.php?title=Introduction\\_to\\_Assets\\_and\\_Configuration](http://wiki.servicenow.com/index.php?title=Introduction_to_Assets_and_Configuration).

ServiceNow Product Offering	Importance to IT Management
	hierarchical “CI relationships,” “consumable parts,” and “license modeling” for compliance purposes. <sup>9</sup>
 <b>Discovery</b>	Discovery “finds computers and other devices connected to an enterprise’s network,” which, as ServiceNow’s website notes, is “a critical step to automating service management.” <sup>10</sup>
 <b>Orchestration</b>	Orchestration “enables an IT organization to automate complex tasks on remote computers quickly and reliably, with best practices every time.” <sup>11</sup> Among other things, this gives customers “the option to create custom orchestration activities.” <sup>12</sup>
 <b>Change and Release Management</b>	ServiceNow uses Change Management to “protect IT and business operations from the adverse effects of unplanned or uncontrolled change.” <sup>13</sup>

18. ServiceNow has made it clear that the ultimate goal of its infringing activities is to destroy BMC’s reputation and business. Among other things, ServiceNow’s Chief Executive Officer Frank Slootman has gone on record with statements about BMC such as:

- (i) “We have been dismantling [BMC’s] business left, right, and center.”
- (ii) “We have taken the whole company down.”
- (iii) “I fear for their future because we’re going to drive a truck right through it . . .”

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<sup>9</sup> See, e.g., [http://wiki.servicenow.com/index.php?title=Defining\\_CI\\_Relationships](http://wiki.servicenow.com/index.php?title=Defining_CI_Relationships); [http://wiki.servicenow.com/index.php?title=Inventory\\_Management](http://wiki.servicenow.com/index.php?title=Inventory_Management); [http://wiki.servicenow.com/index.php?title=Software\\_License\\_Management](http://wiki.servicenow.com/index.php?title=Software_License_Management).

<sup>10</sup> <http://wiki.servicenow.com/index.php?title=Discovery>; <http://www.servicenow.com/products/discovery.html>.

<sup>11</sup> <http://wiki.servicenow.com/index.php?title=Orchestration>.

<sup>12</sup> <http://www.servicenow.com/products/orchestration.html>.

<sup>13</sup> <http://www.servicenow.com/products/it-service-automation-applications/change-and-release-management.html>; [http://wiki.servicenow.com/index.php?title=ITIL\\_Change\\_Management](http://wiki.servicenow.com/index.php?title=ITIL_Change_Management).

19. These statements by ServiceNow's CEO and the statements of its founder, Fred Luddy, demonstrate that ServiceNow is unlawfully reaping the fruits of BMC's investments in research and development (i.e., BMC's patented innovations) and with the purpose of irreparably harming BMC. ServiceNow is also deliberately losing money in the short-term and offering competing products at cut-rate prices for the same purpose, which ServiceNow can do only because it did not make the enormous investments in research and development that were required to build each of these foundational technologies.

**JURISDICTION AND VENUE**

20. This is a civil action for patent infringement arising under the patent laws of the United States, including 35 U.S.C. §§ 271, 281, 283, 284, and 285. This court has jurisdiction of such claims pursuant to 28 U.S.C. §§ 1331 and 1338(a).

21. Personal jurisdiction is proper in the State of Texas and in this judicial district. Among other things, Defendant conducts business, sells infringing products, and is engaged in activities that infringe BMC's IT management patents in the State of Texas and in this judicial district.

22. Venue is proper under 28 U.S.C. §§ 1391 and 1400(b).

**THE PATENTS IN SUIT**

23. On November 2, 1999, the United States Patent and Trademark Office ("USPTO") duly and legally issued United States Patent No. 5,978,594 ("the '594 patent") entitled "System for managing computer resources across a distributed computing environment by first reading discovery information about how to determine system resources presence." BMC holds all substantial rights, title, and interest to the '594 patent. A true and correct copy of the '594 patent is attached as Exhibit A.

24. On November 9, 2004, the USPTO duly and legally issued United States Patent No. 6,816,898 (“the ’898 patent”) entitled “Interfacing external metrics into a performance management system.” BMC holds all substantial rights, title, and interest to the ’898 patent. A true and correct copy of the ’898 patent is attached as Exhibit B.

25. On May 17, 2005, the USPTO duly and legally issued United States Patent No. 6,895,586 (“the ’586 patent”) entitled “Enterprise management system and method which includes a common enterprise-wide namespace and prototype-based hierarchical inheritance.” BMC holds all substantial rights, title, and interest to the ’586 patent. A true and correct copy of the ’586 patent is attached as Exhibit C.

26. On June 13, 2006, the USPTO duly and legally issued United States Patent No. 7,062,683 (“the ’683 patent”) entitled “Two-phase root cause analysis.” BMC holds all substantial rights, title, and interest to the ’683 patent. A true and correct copy of the ’683 patent is attached as Exhibit D.

27. On November 10, 2009, the USPTO duly and legally issued United States Patent No. 7,617,073 (“the ’073 patent”) entitled “System and method for assessing and indicating the health of components.” BMC holds all substantial rights, title, and interest to the ’073 patent. A true and correct copy of the ’073 patent is attached as Exhibit E.

28. On February 4, 2014, the USPTO duly and legally issued United States Patent No. 8,646,093 (“the ’093 patent”) entitled “Method and system for configuration management database software license compliance.” BMC holds all substantial rights, title, and interest to the ’093 patent. A true and correct copy of the ’093 patent is attached as Exhibit F.

29. On March 18, 2014, the USPTO duly and legally issued United States Patent No. 8,674,992 (“the ’992 patent”) entitled “Spotlight graphs.” BMC holds all substantial rights, title,

and interest to the '992 patent. A true and correct copy of the '992 patent is attached as Exhibit G.

**SERVICENOW'S INFRINGING PRODUCTS**

30. ServiceNow has infringed, and continues to infringe, directly and indirectly through induced and/or contributory infringement, the asserted patents by making, having made, using, offering to sell, selling, and/or providing installation, operational support, and instructions for one or more of the products identified in this Complaint, including the ServiceNow Service Automation Platform and related products such as ServiceNow Incident Management, ServiceNow Problem Management, ServiceNow Performance Analytics, ServiceNow Business Services Management Map, ServiceWatch, ServiceNow IT Operations Management, ServiceNow Configuration Management, including the ServiceNow Configuration Management Database (CMDB), ServiceNow Discovery, ServiceNow Orchestration (formerly known as ServiceNow Runbook Automation), and ServiceNow Change and Release Management.

**COUNT 1: INFRINGEMENT OF U.S. PATENT NO. 5,978,594**

31. Paragraphs 1 through 30 are incorporated as if fully set forth herein.

32. On information and belief, ServiceNow directly infringes and will continue to infringe, directly and indirectly, through induced and/or contributory infringement, one or more claims of the '594 patent by making, using, offering to sell, selling, and/or providing installation, operational support, and instructions for infringing products, including the ServiceNow Service Automation Platform and related products.

33. On information and belief, ServiceNow is inducing infringement and will continue to induce infringement of the '594 patent for at least the following reasons. ServiceNow has had actual notice of the '594 patent no later than the filing date of this

Complaint. Despite ServiceNow's actual notice of infringement, ServiceNow continues to make, use, sell, offer to sell, and provide installation, operational support, and instructions for infringing products, including the ServiceNow Service Automation Platform and related products, with the knowledge or willful blindness that its conduct will induce ServiceNow's customers to infringe the '594 patent. ServiceNow engages in many activities that encourage its customers to infringe the '594 patent, including (i) advertising and promotion efforts for the ServiceNow Service Automation Platform and related products;<sup>14</sup> (ii) the publication of demonstrational videos concerning the ServiceNow Service Automation Platform and related products;<sup>15</sup> (iii) the publication of data sheets that purport to describe alleged benefits customers will derive from embracing the ServiceNow Service Automation Platform and related products;<sup>16</sup> (iv) the publication of "white papers" that purport to describe the alleged virtues of the ServiceNow Service Automation Platform and related products;<sup>17</sup> (v) the publication of various "case studies" featuring alleged success stories involving customers who have embraced the ServiceNow Service Automation Platform and related products;<sup>18</sup> (vi) the publication of numerous webpages that provide details concerning various aspects of the ServiceNow Automation Platform and related products that are intended to incite customer interest in the infringing product;<sup>19</sup> (vii) the publication of tutorial, demonstration, and "best practices"

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<sup>14</sup> <http://www.servicenow.com/products/service-automation-platform.html>.

<sup>15</sup> <http://info.servicenow.com/DemoNow>.

<sup>16</sup> <http://www.servicenow.com/content/dam/servicenow/documents/datasheets/ds-service-automation-platform.pdf>.

<sup>17</sup> <http://info.servicenow.com/LP=1931>.

<sup>18</sup> <http://www.servicenow.com/content/dam/servicenow/documents/case-studies/cs-lennox-20130612.pdf>;  
<http://www.servicenow.com/content/dam/servicenow/documents/case-studies/cs-informa-2012.pdf>;  
<http://www.servicenow.com/content/dam/servicenow/documents/case-studies/cs-brit-201202.pdf>.

<sup>19</sup> [http://wiki.servicenow.com/index.php?title=Incident\\_Management](http://wiki.servicenow.com/index.php?title=Incident_Management);  
<http://www.servicenow.com/products/it-service-automation-applications/incident-management.html>;  
<http://www.servicenow.com/products/it-service-automation-applications/problem-management.html>;  
[http://wiki.servicenow.com/index.php?title=Problem\\_Management](http://wiki.servicenow.com/index.php?title=Problem_Management);  
<http://www.servicenow.com/products/performance-analytics.html>;  
[http://wiki.servicenow.com/index.php?title=Performance\\_Analytics](http://wiki.servicenow.com/index.php?title=Performance_Analytics);

instructional videos concerning the ServiceNow Automation Platform and related products;<sup>20</sup> (viii) the provision of “customer support to every customer” as well as “user forums, blogs, product documentation, and useful solutions.”<sup>21</sup> Through these activities, ServiceNow specifically intends that its customers directly infringe the ’594 patent.

34. On information and belief, ServiceNow is contributorily infringing and will continue to contributorily infringe the ’594 patent for at least the following reasons. ServiceNow has had actual notice of the ’594 patent no later than the filing date of this Complaint. ServiceNow provides to its customers, the direct infringers, software components, such as the ServiceNow Discovery and ServiceNow Orchestration (formerly known as ServiceNow Runbook Automation) applications, that lack substantial non-infringing uses and that lead to infringement when combined with other portions of the ServiceNow Automation Platform and related products used by ServiceNow’s customers. These infringing components are a material part of the ServiceNow Automation Platform and related products, which would not function properly without them.

35. ServiceNow derives revenue from selling its infringing products.

#### **COUNT 2: INFRINGEMENT OF U.S. PATENT NO. 6,816,898**

36. Paragraphs 1 through 35 are incorporated as if fully set forth herein.

37. On information and belief, ServiceNow directly infringes and will continue to infringe, directly and indirectly, through induced and/or contributory infringement, one or more

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<http://www.servicenow.com/products/it-service-automation-applications/asset-management.html>;  
[http://wiki.servicenow.com/index.php?title=Asset\\_Management](http://wiki.servicenow.com/index.php?title=Asset_Management);  
<http://www.servicenow.com/products/it-service-automation-applications/configuration-management.html>;  
[http://wiki.servicenow.com/index.php?title=Introduction\\_to\\_Assets\\_and\\_Configuration](http://wiki.servicenow.com/index.php?title=Introduction_to_Assets_and_Configuration);  
<http://www.servicenow.com/products/it-service-automation-applications/change-and-release-management.html>;  
[http://wiki.servicenow.com/index.php?title=ITIL\\_Change\\_Management](http://wiki.servicenow.com/index.php?title=ITIL_Change_Management).

<sup>20</sup> [http://wiki.servicenow.com/index.php?title=Video\\_Tutorials](http://wiki.servicenow.com/index.php?title=Video_Tutorials).

<sup>21</sup> [http://wiki.servicenow.com/index.php?title=Customer\\_Support](http://wiki.servicenow.com/index.php?title=Customer_Support).

claims of the '898 patent by making, using, offering to sell, selling, and/or providing installation, operational support, and instructions for infringing products, including the ServiceNow Service Automation Platform and related products.

38. On information and belief, ServiceNow is inducing infringement and will continue to induce infringement of the '898 patent for at least the following reasons. ServiceNow has had actual notice of the '898 patent no later than the filing date of this Complaint. Despite ServiceNow's actual notice of infringement, ServiceNow continues to make, use, sell, offer to sell, and provide installation, operational support, and instructions for infringing products, including the ServiceNow Service Automation Platform and related products, with the knowledge or willful blindness that its conduct will induce ServiceNow's customers to infringe the '898 patent. ServiceNow engages in many activities that encourage its customers to infringe the '898 patent, including (i) advertising and promotion efforts for the ServiceNow Service Automation Platform and related products;<sup>22</sup> (ii) the publication of demonstrational videos concerning the ServiceNow Service Automation Platform and related products;<sup>23</sup> (iii) the publication of data sheets that purport to describe alleged benefits customers will derive from embracing the ServiceNow Service Automation Platform and related products;<sup>24</sup> (iv) the publication of "white papers" that purport to describe the alleged virtues of the ServiceNow Service Automation Platform and related products;<sup>25</sup> (v) the publication of various "case studies" featuring alleged success stories involving customers who have embraced the ServiceNow Service Automation Platform and related products;<sup>26</sup> (vi) the publication of

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<sup>22</sup> <http://www.servicenow.com/products/service-automation-platform.html>.

<sup>23</sup> <http://info.servicenow.com/DemoNow>.

<sup>24</sup> <http://www.servicenow.com/content/dam/servicenow/documents/datasheets/ds-service-automation-platform.pdf>.

<sup>25</sup> <http://info.servicenow.com/LP=1931>.

<sup>26</sup> <http://www.servicenow.com/content/dam/servicenow/documents/case-studies/cs-lennox-20130612.pdf>;

numerous webpages that provide details concerning various aspects of the ServiceNow Automation Platform and related products that are intended to incite customer interest in the infringing product;<sup>27</sup> (vii) the publication of tutorial, demonstration, and “best practices” instructional videos concerning the ServiceNow Automation Platform and related products;<sup>28</sup> (viii) the provision of “customer support to every customer” as well as “user forums, blogs, product documentation, and useful solutions.”<sup>29</sup> Through these activities, ServiceNow specifically intends that its customers directly infringe the ’898 patent.

39. On information and belief, ServiceNow is contributorily infringing and will continue to contributorily infringe the ’898 patent for at least the following reasons. ServiceNow has had actual notice of the ’898 patent no later than the filing date of this Complaint. ServiceNow provides to its customers, the direct infringers, software components, such as the ServiceNow Performance Analytics, ServiceNow Discovery, and ServiceNow Orchestration (formerly known as ServiceNow Runbook Automation) applications, that lack substantial non-infringing uses and that lead to infringement when combined with other portions of the ServiceNow Automation Platform and related products used by ServiceNow’s customers. These

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<http://www.servicenow.com/content/dam/servicenow/documents/case-studies/cs-informa-2012.pdf>;

<http://www.servicenow.com/content/dam/servicenow/documents/case-studies/cs-brit-201202.pdf>.

<sup>27</sup> [http://wiki.servicenow.com/index.php?title=Incident\\_Management](http://wiki.servicenow.com/index.php?title=Incident_Management);

<http://www.servicenow.com/products/it-service-automation-applications/incident-management.html>;

<http://www.servicenow.com/products/it-service-automation-applications/problem-management.html>;

[http://wiki.servicenow.com/index.php?title=Problem\\_Management](http://wiki.servicenow.com/index.php?title=Problem_Management);

<http://www.servicenow.com/products/performance-analytics.html>;

[http://wiki.servicenow.com/index.php?title=Performance\\_Analytics](http://wiki.servicenow.com/index.php?title=Performance_Analytics);

<http://www.servicenow.com/products/it-service-automation-applications/asset-management.html>;

[http://wiki.servicenow.com/index.php?title=Asset\\_Management](http://wiki.servicenow.com/index.php?title=Asset_Management);

<http://www.servicenow.com/products/it-service-automation-applications/configuration-management.html>;

[http://wiki.servicenow.com/index.php?title=Introduction\\_to\\_Assets\\_and\\_Configuration](http://wiki.servicenow.com/index.php?title=Introduction_to_Assets_and_Configuration);

<http://www.servicenow.com/products/it-service-automation-applications/change-and-release-management.html>;

[http://wiki.servicenow.com/index.php?title=ITIL\\_Change\\_Management](http://wiki.servicenow.com/index.php?title=ITIL_Change_Management).

<sup>28</sup> [http://wiki.servicenow.com/index.php?title=Video\\_Tutorials](http://wiki.servicenow.com/index.php?title=Video_Tutorials).

<sup>29</sup> [http://wiki.servicenow.com/index.php?title=Customer\\_Support](http://wiki.servicenow.com/index.php?title=Customer_Support).

infringing components are a material part of the ServiceNow Automation Platform and related products, which would not function properly without them.

40. ServiceNow derives substantial revenue from selling its infringing products.

**COUNT 3: INFRINGEMENT OF U.S. PATENT NO. 6,895,586**

41. Paragraphs 1 through 40 are incorporated as if fully set forth herein.

42. On information and belief, ServiceNow directly infringes and will continue to infringe, directly and indirectly, through induced and/or contributory infringement, one or more claims of the '586 patent by making, using, offering to sell, selling, and/or providing installation, operational support, and instructions for infringing products, including the ServiceNow Service Automation Platform and related products.

43. On information and belief, ServiceNow is inducing infringement and will continue to induce infringement of the '586 patent for at least the following reasons. ServiceNow has had actual notice of the '586 patent no later than the filing date of this Complaint. Despite ServiceNow's actual notice of infringement, ServiceNow continues to make, use, sell, offer to sell, and provide installation, operational support, and instructions for infringing products, including the ServiceNow Service Automation Platform and related products, with the knowledge or willful blindness that its conduct will induce ServiceNow's customers to infringe the '586 patent. ServiceNow engages in many activities that encourage its customers to infringe the '586 patent, including (i) advertising and promotion efforts for the ServiceNow Service Automation Platform and related products;<sup>30</sup> (ii) the publication of demonstrational videos concerning the ServiceNow Service Automation Platform and related

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<sup>30</sup> <http://www.servicenow.com/products/service-automation-platform.html>.

products;<sup>31</sup> (iii) the publication of data sheets that purport to describe alleged benefits customers will derive from embracing the ServiceNow Service Automation Platform and related products;<sup>32</sup> (iv) the publication of “white papers” that purport to describe the alleged virtues of the ServiceNow Service Automation Platform and related products;<sup>33</sup> (v) the publication of various “case studies” featuring alleged success stories involving customers who have embraced the ServiceNow Service Automation Platform and related products;<sup>34</sup> (vi) the publication of numerous webpages that provide details concerning various aspects of the ServiceNow Automation Platform and related products that are intended to incite customer interest in the infringing product;<sup>35</sup> (vii) the publication of tutorial, demonstration, and “best practices” instructional videos concerning the ServiceNow Automation Platform and related products;<sup>36</sup> (viii) the provision of “customer support to every customer” as well as “user forums, blogs, product documentation, and useful solutions.”<sup>37</sup> Through these activities, ServiceNow specifically intends that its customers directly infringe the ’586 patent.

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<sup>31</sup> <http://info.servicenow.com/DemoNow>.

<sup>32</sup> <http://www.servicenow.com/content/dam/servicenow/documents/datasheets/ds-service-automation-platform.pdf>.

<sup>33</sup> <http://info.servicenow.com/LP=1931>.

<sup>34</sup> <http://www.servicenow.com/content/dam/servicenow/documents/case-studies/cs-lennox-20130612.pdf>;  
<http://www.servicenow.com/content/dam/servicenow/documents/case-studies/cs-informa-2012.pdf>;  
<http://www.servicenow.com/content/dam/servicenow/documents/case-studies/cs-brit-201202.pdf>.

<sup>35</sup> [http://wiki.servicenow.com/index.php?title=Incident\\_Management](http://wiki.servicenow.com/index.php?title=Incident_Management);  
<http://www.servicenow.com/products/it-service-automation-applications/incident-management.html>;  
<http://www.servicenow.com/products/it-service-automation-applications/problem-management.html>;  
[http://wiki.servicenow.com/index.php?title=Problem\\_Management](http://wiki.servicenow.com/index.php?title=Problem_Management);  
<http://www.servicenow.com/products/performance-analytics.html>;  
[http://wiki.servicenow.com/index.php?title=Performance\\_Analytics](http://wiki.servicenow.com/index.php?title=Performance_Analytics);  
<http://www.servicenow.com/products/it-service-automation-applications/asset-management.html>;  
[http://wiki.servicenow.com/index.php?title=Asset\\_Management](http://wiki.servicenow.com/index.php?title=Asset_Management);  
<http://www.servicenow.com/products/it-service-automation-applications/configuration-management.html>;  
[http://wiki.servicenow.com/index.php?title=Introduction\\_to\\_Assets\\_and\\_Configuration](http://wiki.servicenow.com/index.php?title=Introduction_to_Assets_and_Configuration);

<sup>36</sup> [http://wiki.servicenow.com/index.php?title=ITIL\\_Change\\_Management](http://wiki.servicenow.com/index.php?title=ITIL_Change_Management).

<sup>37</sup> [http://wiki.servicenow.com/index.php?title=Customer\\_Support](http://wiki.servicenow.com/index.php?title=Customer_Support).

44. On information and belief, ServiceNow is contributorily infringing and will continue to contributorily infringe the '586 patent for at least the following reasons. ServiceNow has had actual notice of the '586 patent no later than the filing date of this Complaint. ServiceNow provides to its customers, the direct infringers, software components, such as the ServiceNow Configuration Management, including the ServiceNow Configuration Management Database (CMDB), that lack substantial non-infringing uses and that lead to infringement when combined with other portions of the ServiceNow Automation Platform and related products used by ServiceNow's customers. These infringing components are a material part of the ServiceNow Automation Platform and related products, which would not function properly without them.

45. ServiceNow derives substantial revenue from selling its infringing products.

**COUNT 4: INFRINGEMENT OF U.S. PATENT NO. 7,062,683**

46. Paragraphs 1 through 45 are incorporated as if fully set forth herein.

47. On information and belief, ServiceNow directly infringes and will continue to infringe, directly and indirectly, through induced and/or contributory infringement, one or more claims of the '683 patent by making, using, offering to sell, selling, and/or providing installation, operational support, and instructions for infringing products, including the ServiceNow Service Automation Platform and related products.

48. On information and belief, ServiceNow is inducing infringement and will continue to induce infringement of the '683 patent for at least the following reasons. ServiceNow has had actual notice of the '683 patent no later than the filing date of this Complaint. Despite ServiceNow's actual notice of infringement, ServiceNow continues to make, use, sell, offer to sell, and provide installation, operational support, and instructions for infringing products, including the ServiceNow Service Automation Platform and related

products, with the knowledge or willful blindness that its conduct will induce ServiceNow's customers to infringe the '683 patent. ServiceNow engages in many activities that encourage its customers to infringe the '683 patent, including (i) advertising and promotion efforts for the ServiceNow Service Automation Platform and related products;<sup>38</sup> (ii) the publication of demonstrational videos concerning the ServiceNow Service Automation Platform and related products;<sup>39</sup> (iii) the publication of data sheets that purport to describe alleged benefits customers will derive from embracing the ServiceNow Service Automation Platform and related products;<sup>40</sup> (iv) the publication of "white papers" that purport to describe the alleged virtues of the ServiceNow Service Automation Platform and related products;<sup>41</sup> (v) the publication of various "case studies" featuring alleged success stories involving customers who have embraced the ServiceNow Service Automation Platform and related products;<sup>42</sup> (vi) the publication of numerous webpages that provide details concerning various aspects of the ServiceNow Automation Platform and related products that are intended to incite customer interest in the infringing product;<sup>43</sup> (vii) the publication of tutorial, demonstration, and "best practices"

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<sup>38</sup> <http://www.servicenow.com/products/service-automation-platform.html>.

<sup>39</sup> <http://info.servicenow.com/DemoNow>.

<sup>40</sup> <http://www.servicenow.com/content/dam/servicenow/documents/datasheets/ds-service-automation-platform.pdf>.

<sup>41</sup> <http://info.servicenow.com/LP=1931>.

<sup>42</sup> <http://www.servicenow.com/content/dam/servicenow/documents/case-studies/cs-lennox-20130612.pdf>;  
<http://www.servicenow.com/content/dam/servicenow/documents/case-studies/cs-informa-2012.pdf>;  
<http://www.servicenow.com/content/dam/servicenow/documents/case-studies/cs-brit-201202.pdf>.

<sup>43</sup> [http://wiki.servicenow.com/index.php?title=Incident\\_Management](http://wiki.servicenow.com/index.php?title=Incident_Management);  
<http://www.servicenow.com/products/it-service-automation-applications/incident-management.html>;  
<http://www.servicenow.com/products/it-service-automation-applications/problem-management.html>;  
[http://wiki.servicenow.com/index.php?title=Problem\\_Management](http://wiki.servicenow.com/index.php?title=Problem_Management);  
<http://www.servicenow.com/products/performance-analytics.html>;  
[http://wiki.servicenow.com/index.php?title=Performance\\_Analytics](http://wiki.servicenow.com/index.php?title=Performance_Analytics);  
<http://www.servicenow.com/products/it-service-automation-applications/asset-management.html>;  
[http://wiki.servicenow.com/index.php?title=Asset\\_Management](http://wiki.servicenow.com/index.php?title=Asset_Management);  
<http://www.servicenow.com/products/it-service-automation-applications/configuration-management.html>;  
[http://wiki.servicenow.com/index.php?title=Introduction\\_to\\_Assets\\_and\\_Configuration](http://wiki.servicenow.com/index.php?title=Introduction_to_Assets_and_Configuration);  
<http://www.servicenow.com/products/it-service-automation-applications/change-and-release-management.html>;  
[http://wiki.servicenow.com/index.php?title=ITIL\\_Change\\_Management](http://wiki.servicenow.com/index.php?title=ITIL_Change_Management).

instructional videos concerning the ServiceNow Automation Platform and related products;<sup>44</sup> (viii) the provision of “customer support to every customer” as well as “user forums, blogs, product documentation, and useful solutions.”<sup>45</sup> Through these activities, ServiceNow specifically intends that its customers directly infringe the ’683 patent.

49. On information and belief, ServiceNow is contributorily infringing and will continue to contributorily infringe the ’683 patent for at least the following reasons. ServiceNow has had actual notice of the ’683 patent no later than the filing date of this Complaint. ServiceNow provides to its customers, the direct infringers, software components, such as ServiceNow Incident Management and ServiceNow Problem Management applications, including but not limited to, ServiceWatch, that lack substantial non-infringing uses and that lead to infringement when combined with other portions of the ServiceNow Automation Platform and related products used by ServiceNow’s customers. These infringing components are a material part of the ServiceNow Automation Platform and related products, which would not function properly without them.

50. ServiceNow derives substantial revenue from selling its infringing products.

**COUNT 5: INFRINGEMENT OF U.S. PATENT NO. 7,617,073**

51. Paragraphs 1 through 50 are incorporated as if fully set forth herein.

52. On information and belief, ServiceNow directly infringes and will continue to infringe, directly and indirectly, through induced and/or contributory infringement, one or more claims of the ’073 patent by making, using, offering to sell, selling, and/or providing installation, operational support, and instructions for infringing products, including the ServiceNow Service Automation Platform and related products.

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<sup>44</sup> [http://wiki.servicenow.com/index.php?title=Video\\_Tutorials](http://wiki.servicenow.com/index.php?title=Video_Tutorials).

<sup>45</sup> [http://wiki.servicenow.com/index.php?title=Customer\\_Support](http://wiki.servicenow.com/index.php?title=Customer_Support).

53. On information and belief, ServiceNow is inducing infringement and will continue to induce infringement of the '073 patent for at least the following reasons. ServiceNow has had actual notice of the '073 patent no later than the filing date of this Complaint. Despite ServiceNow's actual notice of infringement, ServiceNow continues to make, use, sell, offer to sell, and provide installation, operational support, and instructions for infringing products, including the ServiceNow Service Automation Platform and related products, with the knowledge or willful blindness that its conduct will induce ServiceNow's customers to infringe the '073 patent. ServiceNow engages in many activities that encourage its customers to infringe the '073 patent, including (i) advertising and promotion efforts for the ServiceNow Service Automation Platform and related products;<sup>46</sup> (ii) the publication of demonstrational videos concerning the ServiceNow Service Automation Platform and related products;<sup>47</sup> (iii) the publication of data sheets that purport to describe alleged benefits customers will derive from embracing the ServiceNow Service Automation Platform and related products;<sup>48</sup> (iv) the publication of "white papers" that purport to describe the alleged virtues of the ServiceNow Service Automation Platform and related products;<sup>49</sup> (v) the publication of various "case studies" featuring alleged success stories involving customers who have embraced the ServiceNow Service Automation Platform and related products;<sup>50</sup> (vi) the publication of numerous webpages that provide details concerning various aspects of the ServiceNow Automation Platform and related products that are intended to incite customer interest in the

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<sup>46</sup> <http://www.servicenow.com/products/service-automation-platform.html>.

<sup>47</sup> <http://info.servicenow.com/DemoNow>.

<sup>48</sup> <http://www.servicenow.com/content/dam/servicenow/documents/datasheets/ds-service-automation-platform.pdf>.

<sup>49</sup> <http://info.servicenow.com/LP=1931>.

<sup>50</sup> <http://www.servicenow.com/content/dam/servicenow/documents/case-studies/cs-lennox-20130612.pdf>;  
<http://www.servicenow.com/content/dam/servicenow/documents/case-studies/cs-informa-2012.pdf>;  
<http://www.servicenow.com/content/dam/servicenow/documents/case-studies/cs-brit-201202.pdf>.

infringing product;<sup>51</sup> (vii) the publication of tutorial, demonstration, and “best practices” instructional videos concerning the ServiceNow Automation Platform and related products;<sup>52</sup> (viii) the provision of “customer support to every customer” as well as “user forums, blogs, product documentation, and useful solutions.”<sup>53</sup> Through these activities, ServiceNow specifically intends that its customers directly infringe the ’073 patent.

54. On information and belief, ServiceNow is contributorily infringing and will continue to contributorily infringe the ’073 patent for at least the following reasons. ServiceNow has had actual notice of the ’073 patent no later than the filing date of this Complaint. ServiceNow provides to its customers, the direct infringers, software components, such as ServiceNow Incident Management, ServiceNow Problem Management, ServiceNow Change and Release Management, and ServiceNow IT Operations Management applications, including ServiceWatch and Business Services Management Map, that lack substantial non-infringing uses and that lead to infringement when combined with other portions of the ServiceNow Automation Platform and related products used by ServiceNow’s customers. These infringing components are a material part of the ServiceNow Automation Platform and related products, which would not function properly without them.

55. ServiceNow derives substantial revenue from selling its infringing products.

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<sup>51</sup> [http://wiki.servicenow.com/index.php?title=Incident\\_Management](http://wiki.servicenow.com/index.php?title=Incident_Management);  
<http://www.servicenow.com/products/it-service-automation-applications/incident-management.html>;  
<http://www.servicenow.com/products/it-service-automation-applications/problem-management.html>;  
[http://wiki.servicenow.com/index.php?title=Problem\\_Management](http://wiki.servicenow.com/index.php?title=Problem_Management);  
<http://www.servicenow.com/products/performance-analytics.html>;  
[http://wiki.servicenow.com/index.php?title=Performance\\_Analytics](http://wiki.servicenow.com/index.php?title=Performance_Analytics);  
<http://www.servicenow.com/products/it-service-automation-applications/asset-management.html>;  
[http://wiki.servicenow.com/index.php?title=Asset\\_Management](http://wiki.servicenow.com/index.php?title=Asset_Management);  
<http://www.servicenow.com/products/it-service-automation-applications/configuration-management.html>;  
[http://wiki.servicenow.com/index.php?title=Introduction\\_to\\_Assets\\_and\\_Configuration](http://wiki.servicenow.com/index.php?title=Introduction_to_Assets_and_Configuration);  
<http://www.servicenow.com/products/it-service-automation-applications/change-and-release-management.html>;  
[http://wiki.servicenow.com/index.php?title=ITIL\\_Change\\_Management](http://wiki.servicenow.com/index.php?title=ITIL_Change_Management).

<sup>52</sup> [http://wiki.servicenow.com/index.php?title=Video\\_Tutorials](http://wiki.servicenow.com/index.php?title=Video_Tutorials).

<sup>53</sup> [http://wiki.servicenow.com/index.php?title=Customer\\_Support](http://wiki.servicenow.com/index.php?title=Customer_Support).

**COUNT 6: INFRINGEMENT OF U.S. PATENT NO. 8,646,093**

56. Paragraphs 1 through 55 are incorporated as if fully set forth herein.

57. On information and belief, ServiceNow directly infringes and will continue to infringe, directly and indirectly, through induced and/or contributory infringement, one or more claims of the '093 patent by making, using, offering to sell, selling, and/or providing installation, operational support, and instructions for infringing products, including the ServiceNow Service Automation Platform and related products.

58. On information and belief, ServiceNow is inducing infringement and will continue to induce infringement of the '093 patent for at least the following reasons. ServiceNow has had actual notice of the '093 patent no later than the filing date of this Complaint. Despite ServiceNow's actual notice of infringement, ServiceNow continues to make, use, sell, offer to sell, and provide installation, operational support, and instructions for infringing products, including the ServiceNow Service Automation Platform and related products, with the knowledge or willful blindness that its conduct will induce ServiceNow's customers to infringe the '093 patent. ServiceNow engages in many activities that encourage its customers to infringe the '093 patent, including (i) advertising and promotion efforts for the ServiceNow Service Automation Platform and related products;<sup>54</sup> (ii) the publication of demonstrational videos concerning the ServiceNow Service Automation Platform and related products;<sup>55</sup> (iii) the publication of data sheets that purport to describe alleged benefits customers will derive from embracing the ServiceNow Service Automation Platform and related products;<sup>56</sup>

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<sup>54</sup> <http://www.servicenow.com/products/service-automation-platform.html>.

<sup>55</sup> <http://info.servicenow.com/DemoNow>.

<sup>56</sup> <http://www.servicenow.com/content/dam/servicenow/documents/datasheets/ds-service-automation-platform.pdf>.

(iv) the publication of “white papers” that purport to describe the alleged virtues of the ServiceNow Service Automation Platform and related products;<sup>57</sup> (v) the publication of various “case studies” featuring alleged success stories involving customers who have embraced the ServiceNow Service Automation Platform and related products;<sup>58</sup> (vi) the publication of numerous webpages that provide details concerning various aspects of the ServiceNow Automation Platform and related products that are intended to incite customer interest in the infringing product;<sup>59</sup> (vii) the publication of tutorial, demonstration, and “best practices” instructional videos concerning the ServiceNow Automation Platform and related products;<sup>60</sup> (viii) the provision of “customer support to every customer” as well as “user forums, blogs, product documentation, and useful solutions.”<sup>61</sup> Through these activities, ServiceNow specifically intends that its customers directly infringe the ’093 patent.

59. On information and belief, ServiceNow is contributorily infringing and will continue to contributorily infringe the ’093 patent for at least the following reasons. ServiceNow has had actual notice of the ’093 patent no later than the filing date of this Complaint. ServiceNow provides to its customers, the direct infringers, software components, such as

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<sup>57</sup> <http://info.servicenow.com/LP=1931>.

<sup>58</sup> <http://www.servicenow.com/content/dam/servicenow/documents/case-studies/cs-lennox-20130612.pdf>;  
<http://www.servicenow.com/content/dam/servicenow/documents/case-studies/cs-informa-2012.pdf>;  
<http://www.servicenow.com/content/dam/servicenow/documents/case-studies/cs-brit-201202.pdf>.

<sup>59</sup> [http://wiki.servicenow.com/index.php?title=Incident\\_Management](http://wiki.servicenow.com/index.php?title=Incident_Management);  
<http://www.servicenow.com/products/it-service-automation-applications/incident-management.html>;  
<http://www.servicenow.com/products/it-service-automation-applications/problem-management.html>;  
[http://wiki.servicenow.com/index.php?title=Problem\\_Management](http://wiki.servicenow.com/index.php?title=Problem_Management);  
<http://www.servicenow.com/products/performance-analytics.html>;  
[http://wiki.servicenow.com/index.php?title=Performance\\_Analytics](http://wiki.servicenow.com/index.php?title=Performance_Analytics);  
<http://www.servicenow.com/products/it-service-automation-applications/asset-management.html>;  
[http://wiki.servicenow.com/index.php?title=Asset\\_Management](http://wiki.servicenow.com/index.php?title=Asset_Management);  
<http://www.servicenow.com/products/it-service-automation-applications/configuration-management.html>;  
[http://wiki.servicenow.com/index.php?title=Introduction\\_to\\_Assets\\_and\\_Configuration](http://wiki.servicenow.com/index.php?title=Introduction_to_Assets_and_Configuration);  
<http://www.servicenow.com/products/it-service-automation-applications/change-and-release-management.html>;  
[http://wiki.servicenow.com/index.php?title=ITIL\\_Change\\_Management](http://wiki.servicenow.com/index.php?title=ITIL_Change_Management).

<sup>60</sup> [http://wiki.servicenow.com/index.php?title=Video\\_Tutorials](http://wiki.servicenow.com/index.php?title=Video_Tutorials).

<sup>61</sup> [http://wiki.servicenow.com/index.php?title=Customer\\_Support](http://wiki.servicenow.com/index.php?title=Customer_Support).

ServiceNow Configuration Management, including the ServiceNow Configuration Management Database (CMDB), that lack substantial non-infringing uses and that lead to infringement when combined with other portions of the ServiceNow Automation Platform and related products used by ServiceNow's customers. These infringing components are a material part of the ServiceNow Automation Platform and related products, which would not function properly without them.

60. ServiceNow derives substantial revenue from selling its infringing products.

**COUNT 7: INFRINGEMENT OF U.S. PATENT NO. 8,674,992**

61. Paragraphs 1 through 60 are incorporated as if fully set forth herein.

62. On information and belief, ServiceNow directly infringes and will continue to infringe, directly and indirectly, through induced and/or contributory infringement, one or more claims of the '992 patent by making, using, offering to sell, selling, and/or providing installation, operational support, and instructions for infringing products, including the ServiceNow Service Automation Platform and related products.

63. On information and belief, ServiceNow is inducing infringement and will continue to induce infringement of the '992 patent for at least the following reasons. ServiceNow has had actual notice of the '992 patent no later than the filing date of this Complaint. Despite ServiceNow's actual notice of infringement, ServiceNow continues to make, use, sell, offer to sell, and provide installation, operational support, and instructions for infringing products, including the ServiceNow Service Automation Platform and related products, with the knowledge or willful blindness that its conduct will induce ServiceNow's customers to infringe the '992 patent. ServiceNow engages in many activities that encourage its customers to infringe the '992 patent, including (i) advertising and promotion efforts for the

ServiceNow Service Automation Platform and related products;<sup>62</sup> (ii) the publication of demonstrational videos concerning the ServiceNow Service Automation Platform and related products;<sup>63</sup> (iii) the publication of data sheets that purport to describe alleged benefits customers will derive from embracing the ServiceNow Service Automation Platform and related products;<sup>64</sup> (iv) the publication of “white papers” that purport to describe the alleged virtues of the ServiceNow Service Automation Platform and related products;<sup>65</sup> (v) the publication of various “case studies” featuring alleged success stories involving customers who have embraced the ServiceNow Service Automation Platform and related products;<sup>66</sup> (vi) the publication of numerous webpages that provide details concerning various aspects of the ServiceNow Automation Platform and related products that are intended to incite customer interest in the infringing product;<sup>67</sup> (vii) the publication of tutorial, demonstration, and “best practices” instructional videos concerning the ServiceNow Automation Platform and related products;<sup>68</sup> (viii) the provision of “customer support to every customer” as well as “user forums, blogs,

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<sup>62</sup> <http://www.servicenow.com/products/service-automation-platform.html>.

<sup>63</sup> <http://info.servicenow.com/DemoNow>.

<sup>64</sup> <http://www.servicenow.com/content/dam/servicenow/documents/datasheets/ds-service-automation-platform.pdf>.

<sup>65</sup> <http://info.servicenow.com/LP=1931>.

<sup>66</sup> <http://www.servicenow.com/content/dam/servicenow/documents/case-studies/cs-lennox-20130612.pdf>;

<http://www.servicenow.com/content/dam/servicenow/documents/case-studies/cs-informa-2012.pdf>;

<http://www.servicenow.com/content/dam/servicenow/documents/case-studies/cs-brit-201202.pdf>.

<sup>67</sup> [http://wiki.servicenow.com/index.php?title=Incident\\_Management](http://wiki.servicenow.com/index.php?title=Incident_Management);

<http://www.servicenow.com/products/it-service-automation-applications/incident-management.html>;

<http://www.servicenow.com/products/it-service-automation-applications/problem-management.html>;

[http://wiki.servicenow.com/index.php?title=Problem\\_Management](http://wiki.servicenow.com/index.php?title=Problem_Management);

<http://www.servicenow.com/products/performance-analytics.html>;

[http://wiki.servicenow.com/index.php?title=Performance\\_Analytics](http://wiki.servicenow.com/index.php?title=Performance_Analytics);

<http://www.servicenow.com/products/it-service-automation-applications/asset-management.html>;

[http://wiki.servicenow.com/index.php?title=Asset\\_Management](http://wiki.servicenow.com/index.php?title=Asset_Management);

<http://www.servicenow.com/products/it-service-automation-applications/configuration-management.html>;

[http://wiki.servicenow.com/index.php?title=Introduction\\_to\\_Assets\\_and\\_Configuration](http://wiki.servicenow.com/index.php?title=Introduction_to_Assets_and_Configuration);

<http://www.servicenow.com/products/it-service-automation-applications/change-and-release-management.html>;

[http://wiki.servicenow.com/index.php?title=ITIL\\_Change\\_Management](http://wiki.servicenow.com/index.php?title=ITIL_Change_Management).

<sup>68</sup> [http://wiki.servicenow.com/index.php?title=Video\\_Tutorials](http://wiki.servicenow.com/index.php?title=Video_Tutorials).

product documentation, and useful solutions.”<sup>69</sup> Through these activities, ServiceNow specifically intends that its customers directly infringe the ’992 patent.

64. On information and belief, ServiceNow is contributorily infringing and will continue to contributorily infringe the ’992 patent for at least the following reasons. ServiceNow has had actual notice of the ’992 patent no later than the filing date of this Complaint. ServiceNow provides to its customers, the direct infringers, software components, such as ServiceNow Incident Management, ServiceNow Change and Release Management, ServiceNow Problem Management, and ServiceNow IT Operations Management applications, including ServiceWatch, that lack substantial non-infringing uses and that lead to infringement when combined with other portions of the ServiceNow Automation Platform and related products used by ServiceNow’s customers. These infringing components are a material part of the ServiceNow Automation Platform and related products, which would not function properly without them.

65. ServiceNow derives substantial revenue from selling its infringing products.

### **WILLFUL INFRINGEMENT**

66. Paragraphs 1 through 65 are incorporated as if fully set forth herein.

67. ServiceNow has hired several key ex-BMC employees, including engineers and sales personnel, who were intimately familiar with BMC’s products and innovations and upon information and belief knew that BMC protects such products and innovations through patent protection.

68. Upon information and belief, ServiceNow improperly used the BMC employees it hired to develop key aspects of the ServiceNow Service Automation Platform and related products, including at least some of the features that infringe the patents-in-suit. Thus, upon

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<sup>69</sup> [http://wiki.servicenow.com/index.php?title=Customer\\_Support](http://wiki.servicenow.com/index.php?title=Customer_Support).

information and belief, ServiceNow developed its infringing products by copying BMC's products, with full knowledge or willful blindness that BMC's products were patented and that copying BMC's products would result in patent infringement.

69. ServiceNow's knowledge of BMC's products and patents is also evident from ServiceNow's public statements. As explained in Paragraph 15, ServiceNow's founder, Fred Luddy, admitted that copying and stealing are key aspects of ServiceNow's business model. Given that BMC is the industry leader and ServiceNow's foremost competitor, and given the fundamental IT management technologies that are the subject of BMC's patents, it seems clear that Mr. Luddy was referring to BMC's ideas. That conclusion is further reinforced by the inflammatory and disparaging comments reproduced in Paragraph 18 that ServiceNow's CEO, Frank Slootman, has made about BMC, in which Mr. Slootman admitted that ServiceNow's business model is to "dismantl[e] BMC's] business."

70. ServiceNow's infringement occurred with knowledge of and/or objective recklessness and thus has been and will continue to be willful and deliberate. ServiceNow's willful and deliberate infringement entitles BMC to enhanced damages under 35 U.S.C. § 285.

#### **IRREPARABLE HARM TO BMC**

71. BMC has been irreparably harmed by ServiceNow's acts of infringement, and will continue to be harmed unless and until ServiceNow's acts of infringement are enjoined by this Court. BMC has no adequate remedy at law to redress ServiceNow's continuing acts of infringement. The hardships that would be imposed upon ServiceNow by an injunction are less than those faced by BMC should an injunction not issue. Furthermore, the public interest would be served by issuance of an injunction.

**PRAYER FOR RELIEF**

**WHEREFORE**, BMC prays for the following relief:

1. A judgment that ServiceNow directly and/or indirectly infringes the '594, '898, '586, '683, '073, '093, and '992 patents;
2. A permanent injunction preventing ServiceNow and its respective officers, directors, agents, servants, employees, attorneys, licensees, successors, and assigns, and those in active concert or participation with any of them, from engaging in infringing activities with respect to the '594, '898, '586, '683, '073, '093, and '992 patents;
3. A judgment that ServiceNow's infringement has been willful;
4. A ruling that this case is exceptional under 35 U.S.C. § 285;
5. A judgment and order requiring ServiceNow to pay BMC damages under 35 U.S.C. § 284, including supplemental damages for any continuing post-verdict infringement up until entry of judgment, with an accounting, as needed, as well as treble damages for willful infringement under 35 U.S.C. §285;
6. A judgment and order requiring ServiceNow to pay BMC's costs of this action (including all disbursements);
7. A judgment and order requiring ServiceNow to pay pre-judgment and post-judgment interest on damages awarded; and
8. Such other and further relief as the Court may deem just and proper.

Dated: September 23, 2014

Respectfully submitted,

*/s/ Sam Baxter*

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Samuel F. Baxter  
Texas State Bar No. 01938000  
sbaxter@mckoolsmith.com  
MCKOOL SMITH, P.C.  
104 East Houston, Suite 300  
Marshall, Texas 75670  
Telephone: (903) 923-9000  
Facsimile: (903) 923-9099

Robert A. Cote  
rcote@mckoolsmith.com  
Radu A. Lelutiu  
rlelutiu@mckoolsmith.com  
David R. Dehoney  
ddehoney@mckoolsmith.com  
MCKOOL SMITH P.C.  
One Bryant Park, 47th Floor  
New York, New York 10036  
Telephone: (212) 402-9400  
Facsimile: (212) 402-9444

Holly E. Engelmann  
hengelmann@mckoolsmith.com  
MCKOOL SMITH P.C.  
300 Crescent Court, Suite 1500  
Dallas, Texas 75201  
Telephone: (214) 978-4000  
Facsimile: (214) 978-4044